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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,597	10/01/2003	Dominic F. DeLaquil	DELD101	8229

7590 12/12/2006  
ROBERT L. SHAVER  
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EXAMINER

SHAPIRO, JEFFERY A

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/677,597

Applicant(s)

DELAQUIL, DOMINIC F.

Examiner

Jeffrey A. Shapiro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/29/06 has been entered.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3-8, 10-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al (US 6,859,215 B1).

As described in Claims 1-14, Brown discloses a menu (62, 64, 66, 68, 72, 74, 76, 82, 94 or 98) which have indicators for indicating adherence to various diets (such as Kosher, Vegan Heart Healthy or Organic. See figures 4, 5 and 6a-c, which allows a customer to choose ingredients to be compliant with a particular diet plan, for a restaurant kitchen to prepare. See also figure 2, elements 36, 46 and 49 and col. 5,

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lines 3-40. Further regarding Claim 14, note col. 5, lines 48-67 and col. 6, lines 1-10 that describes listing diets on separate menus with compliance to a particular diet, with various items distinguished from others. For example, in col. 5, lines 65-67, items that do not satisfy the criteria of a particular diet or preference are "graphically distinguished."

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Tsai et al (US 6,016,741).

With regards to Claim 17, Brown discloses the menu generating system described above. Brown further discloses a menu system that incorporates customer preferences with regards to food preparation techniques. See col. 6, lines 38-42.

Regarding Claim 15, Brown does not expressly disclose, but Tsai discloses an electric grill, also known under the trademark "the George Foreman Grill", for preparing meats/fish such that fats naturally drain away from said meat/fish. See Abstract of Tsai.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have used Tsai's electric grill having grease drain-off capability in a kitchen that services customers using Brown's menu system.

The suggestion/motivation would have been to provide an option for making meats more "heart healthy" by draining away excess fats. See again, Tsai's abstract and Brown's figure 4, noting the column "heart smart" in row (62).

Regarding Claim 16, it would have been obvious to one of ordinary skill to have trained restaurant staff in the use of the menu system and the various diet plans and preferences that are available. The suggestion/motivation would have been to better enable customers to work with the menu and to choose food items that better fit their nutritional goals.

### ***Response to Arguments***

6. Applicant's arguments filed 11/29/06 have been fully considered but they are not persuasive. Applicant asserts that the limitations added to Independent Claims 1, 6, 8, 10, 12 and 15 concerning placing diet indicators on the menu interface for indicating a diet preference on all dishes chosen are not found in Brown. However, Brown discloses that a customer presents preferences, after which the computer presents a menu for the customer to choose items. See col. 5, lines 7-15. Brown discloses at col. 5, lines 16-18 that "when no food preferences are designated, a food menu of all food menu items without food preference designation may be provided." In other words, the menu is provided prior to the ordering of the items.

*Note that when a customer chooses a food preference through the diet indicator in the form of a word such as kosher or vegan, the menu having those items is necessarily displayed. See also figure 2, element (36) which indicates "specialized food menus". Even if Brown discloses specifying a particular menu having one item under a*

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*particular diet, it is considered to be inherent that once the diet indicator is chosen, that a particular menu having various items are displayed from which to choose from. Even if such a menu allows choices at the ingredient level, the structure and function is substantially the same as Applicant's claimed system because indicating a choice such as hamburger, i.e, a big mac, can be considered to be enough of a descriptor to a kitchen to make up a standard hamburger with lettuce, ketchup and mayonnaise, for example. It would be the same as if one were to indicate "no mayonnaise". The kitchen could still construe that as no mayonnaise on any item chosen as well as only on the one item.* Brown discloses a menu at figure 4 which describes the ingredients in one column and whether said ingredients are allowed to be included in a particular diet such as kosher or vegan, in the columns at the right. This structure is considered to be an "indication" through the presentation of a "no" or "yes" indicator next to the ingredient as to the diet the ingredient is allowed to be used for. Therefore, Brown is considered to meet the limitations of Applicant's claims as currently amended.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick H. Mackey can be reached on (571)272-6916. The fax phone


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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAS 

December 9, 2006

  
PATRICK MACKEY  
SUPERVISORY PATENT EXAMINER  
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